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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/626,517	07/27/2000	Gerald R. Koefeldt	RPC 0506	9474

33171 7590 11/05/2003

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EXAMINER

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ART UNIT PAPER NUMBER

3727

DATE MAILED: 11/05/2003

17

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 17

Application Number: 09/626,517
Filing Date: July 27, 2000
Appellant(s): KOEFELDA ET AL.

Konstantine J. Diamond
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 6/13/03.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The amendment after final rejection filed on 6/13/03 has not been entered.

The claim appendix as presented is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is substantially correct.

The changes are as follows: the issues are whether the rejections are proper or improper.

(7) Grouping of Claims

Appellant's brief includes a statement that claims 1-23 and 25-29 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

D 378,249	Apps et al	3- 1997
5,060,819	Apps	10-1991

Rehrigh Pacific Company's Splash Crate, two pages including 5 pictures of the crate,

approximately March 1998. Provided by applicant.

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-23 and 25-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Apps et al (US D 378,249). Regarding claim 1, see Figs. 1 and 2, where it is shown that a case with first and second sidewall pairs integrally formed with the floor, each sidewall including a side band member that includes the logo as well as the pylons. Fig. 2 shows the band being above the floor that defines a nesting area below. The pylons will nest in the above case. The upper and lower edges of the band, i.e. the logo have downward contours that define the corner band portions. The corner band portions have a corner upper edge and a corner lower edge, wherein each nesting area matingly receives a corresponding side band member of a nested subjacent crate. The bottom of the logo of one case sits on the top of the log of the subjacent case. Regarding claim 2, the band has a downward contour as seen in Fig. 2. Regarding claims 3 and 4, see Fig. 1, there is a plurality of projections on the sides of the logo band

and the end bands have corner projections, which are recessed inwardly from the end band member. The handles extend between the corner projections. Regarding claims 5, 15, and 22, see Fig. 4 where the projecting members are substantially co-planar. Regarding claims 9, 18, and 25, the ends as well as the sides are double wall construction since there are opposed wall portions in both locations. Regarding claim 12, the same occurs on the end bands where the handle is received into the recess in the lower end of the end band. Regarding claim 20, the corner projections are the parts extending above the band in the corners that are recessed inwardly from the band member. Regarding claim 11, the upper and lower edges of the band have a wave like contour. Regarding claim 6, the projections as seen in Figs. 1 and 2, the ends have the diagonally opposed surfaces on either side of the handle extending to the end band. The sidewalls have diagonally opposed surfaces on the projections. These surfaces prevent misuse of the case.

Claims 1, 2, 4-12, 14-20, 23, and 25-29 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Apps (US 5,060,819). Regarding claim 1, see Figs. 1-13, where the claimed structure is shown. Fig. 9 shows the nesting of the cases. Claim 1 does not require the projections and are part of the band member. The projections are clearly received into the nesting area that is above the floor of the container. Regarding claim 2, the contours are directly downwardly. Regarding claim 4, the projections in the corners are received into the mating area in the bottom surface of the corner band. Regarding claim 5, the corner projections are substantially co-planar with the projections on the end

walls. Regarding claim 6, the surfaces of the projections are diagonally opposed and prevent crate misuse when stacking. Regarding claim 9, the double wall includes the sidewall and the transverse lip at the top of the sidewall. This represents two walls. Regarding claim 10, the inner surface of the band member is attached to the floor. Regarding claim 11, the upper and lower surfaces represent a wave-like contour. Regarding claims 12, 14-20, 23 and 25-29, see the above discussion of claims of 1-11.

Claims 1, 2, 6-10, 12, and 16-20, 23, 25, and 26 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Rehrig Pacific "Splash Crate". Regarding claims 1, 12 and 26, see the photos of the splash crate where the nesting area is well shown and defined in the side band that includes the projections or pylons. The projections are received in the band member. The projections are part of the band member. Moreover, the projections are part of the band as they are molded in one-piece with the band. The projections have diagonally opposed surfaces for preventing misuse of the case. Regarding claim 9, the end and the sidewalls have double wall construction as seen in the photos. Regarding claim 20, the projections extend from the corner portions. Regarding claim 23, the sidewalls have openings as seen in the upper and middle photographs on page 1 of the reference. Regarding claim 25, see photographs on page two where the walls are seen as being double.

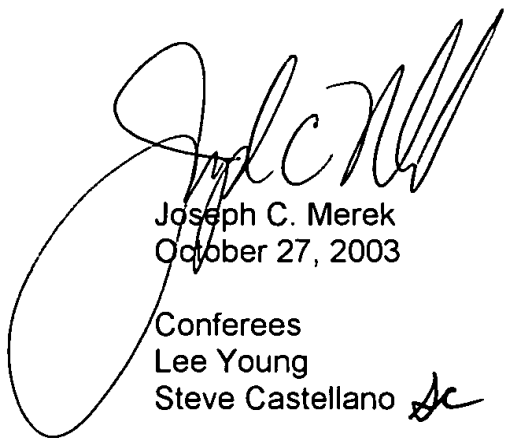
(11) Response to Argument

Appellant's argument with respect to the Apps et al '249 reference is that the pylons or projections are not nested below the bottom edge of the band. When the cases of this reference are stacked the projections are the first part that is received by the upper case. They are initially received by the area below the logo bands. Since the pylons are recessed inward of the outer surface of the band, the projections or pylons pass by the band the upper surface of the band of the lower case supports the lower surface of the band of the upper case. The logo bands matingly engage each other. The logos are contoured upwardly and downwardly between the corners. Appellant argues that the projections cannot be part of the band. This is inaccurate. The projections of the reference are one piece with the band in the same manner that the projections of the instant invention are one piece with its band. They are clearly part of the band.

Appellant's argument with respect to Apps '819 and the Splash crate references is that the projections cannot be considered as part of the band. Claims 1 and 12 do not require projections and therefore the projections can therefore be considered part of the band. The claims do not have any limitations that preclude this reading of the reference. Moreover, the projections of the reference are one piece with the band and are therefor part of the band.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



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October 27, 2003

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